IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 353 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAILALBHAI K PARMAR

Versus

BABUBHAI M VAGHELRI

Appearance:

MR HM PARIKH for Petitioners

MR BC DAVE for Respondent No. 1

MR SP DAVE APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/05/2000

ORAL JUDGEMENT

Heard the learned advocates.

This Revision under section 397 CRPC read with section 401 CRPC arises of the order dated 11th August,

1994, made by the learned Judicial Magistrate, First Class, Balasinor, in Inquiry Case No. 43/93. The petitioners before this court are the accused in aforesaid Inquiry Case No. 43/93, and the respondent no.1 is the complainant. The accused are the Police Officers.

The complainant has lodged a complaint before the learned Magistrate under section 200 CRPC. It is alleged that on 8th March, 1993, all the five accused had gone to execute a warrant upon one Jibha Vaghari. However, the said Jibha Vaghari was not available at his residence and the accused were returning without executing the warrant. While returning, the accused no. 5 opened fire with his service weapon causing grievous injury to the complainant for which he had to undergo a long treatment. The accused are, therefore, alleged to have committed offences punishable under sections 307, 504 and 506 (2) IPC. Pursuant to the said complaint, the evidence of the complainant was recorded, and process were issued against the accused. Feeling aggrieved, the accused made an application seeking discharge on the ground that the accused were Police Officers and at the time of incident, they were on duty. No cognizance of offence against the accused could have been taken by the learned Magistrate unless sanction to prosecute the accused were first obtained by the complainant. The said application has been rejected by the learned Magistrate under the impugned order dated 11th August, 1994. Feeling aggrieved, the accused have preferred the present Revision.

Upon perusal of the impugned order, it appears that no evidence was produced by the accused at that stage. Having regard to the nature of the complaint, it can not be conclusively said that the accused, at the relevant time, had acted in discharge of their duty. Besides, the offence being one punishable under section 307 IPC, it is the Sessions Court which is competent to try the accused. The learned Magistrate, held that the case was required to be committed to the Sessions Court and the accused may renew their application before the learned Sessions Judge, and the same can be decided after further evidence is recorded.

I am of the view that the learned Magistrate was absolutely correct in holding that it was too early a stage to conclusively hold that the accused were acting in due discharge of their duty. Besides, the offence being triable by the Sessions Court, such application should be made before the Sessions Court. The impugned

judgment and order, therefore, does not warrant interference.

Revision is, therefore, dismissed. Rule is discharged. Interim relief is vacated.

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JOSHI